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No. 90-401

Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES
October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

BRIEF IN OPPOSITION TO CERTIORARI

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November 20, 1990.

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QUESTIONS PRESENTED

1. Does this Court have jurisdiction to grant certiorari when there has been no final judgment in either the Massachusetts or California courts?

2. Did the Supreme Judicial Court of Massachusetts abuse its discretion in deciding that the findings of the State Bar Court of California provided a sufficient basis for temporarily suspending petitioner's license to practice law in Massachusetts when the California Supreme Court had denied review of those findings and this Court had denied certiorari?

3. Did the Supreme Judicial Court of Massachusetts abuse its discretion in refusing to rehear petitioner's various constitutional challenges to the procedures of the California State Bar Court?

PARTIES TO THE PROCEEDING

The petitioner misnames the parties to the proceedings below. Neither the Supreme Judicial Court of Massachusetts nor the Chief Justice of that Court are proper parties.

The case below was denominated In the Matter of Lebbos. The parties below, who are also the proper parties to this petition, were Betsey Warren Lebbos and the Bar Counsel. The Bar Counsel is an officer of the Board of Bar Overseers of the Supreme Judicial Court and is the official charged with prosecution of violations of the Disciplinary Rules which govern attorneys. Constance V. Vecchione, Esq. is currently the Acting Bar Counsel.

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DECISION BELOW

The decision below is In the Matter of Lebbos, 407 Mass. 1010 (1990). The copy of this decision which is reproduced in the Petition for Certiorari contains some significant typographical errors. In particular, an elision in the sixth line on page A-6 makes the opinion difficult to understand. A photocopy of the decision as appearing in the official reports is attached to this brief.

STATEMENT OF THE CASE

The petitioner, Betsey Warren Lebbos, is an attorney who has been admitted to practice in both Massachusetts and California. At all relevant times, her law practice has been maintained in California. She has not practiced law in Massachusetts. In fact, she has been excused from paying bar dues in Massachusetts because she informed the Massachusetts Board of Bar Overseers that she did not practice in Massachusetts.

On February 14, 1989, a Hearing Panel Referee of the California State Bar Court ordered that Ms. Lebbos be involuntarily placed on inactive status. Cal. Bus. & Prof. Code § 6007(c). Involuntary inactive status is a form of temporary suspension from the practice of law. Conway v. State Bar, 767 P.2d 657, 659 (1989). The California Supreme Court denied review on April 26, 1989, and this Court denied certiorari on October 30, 1989. Lebbos v. State Bar, 110 S.Ct. 335. Ms. Lebbos was therefore temporarily suspended from the practice of law in California. Her suspension was in conjunction with pending disciplinary proceedings which had resulted in a recommendation of disbarment; these disciplinary proceedings are still pending before the California Supreme Court.

The California order was brought to the attention of the Massachusetts Supreme Judicial Court pursuant to S.J.C. Rule 4:01(16). A single justice of the Supreme Judicial Court determined that the California findings and order satisfied

Massachusetts' requirements for a temporary suspension pending final disposition of disciplinary proceedings. S.J.C. Rule 4:01(12A). The single justice exercised his discretion to impose a Massachusetts suspension identical to the California one. He ordered the petitioner 'suspended from the practice of law in the Commonwealth of Massachusetts pending final disposition of disciplinary proceedings pending in the Supreme Court of the State of California."

Ms. Lebbos appealed to the full bench of the Supreme Judicial Court, which affirmed the decision of the single justice. In the Matter of Lebbos, 407 Mass. 1010 (1990). The Court held:

> The single justice was entitled in his discretion, as we are in our discretion, to conclude that, because the Supreme Court of California rejected the attorney's challenge to her temporary suspension pending a final appellate decision on her disbarment, parallel temporary suspension in Massachusetts is warranted. The attorney's various challenges to the constitutionality of the procedures in California need not be reassessed and decided here. . . . A final adjudication made elsewhere that

> circumstances warrant a temporary suspension may properly be the basis for a reciprocal order of temporary suspension here, particularly when the Supreme Court of that jurisdiction upheld that order.

The Massachusetts disciplinary proceedings are still pending. There are no charges against Ms. Lebbos except those arising out of California. The Massachusetts court is awaiting final disposition of the California charges before determining what reciprocal discipline is appropriate in Massachusetts.

SUMMARY OF THE ARGUMENT

1. There has been no final judgment of the Supreme Judicial Court of Massachusetts. Consequently, this Court does not have jurisdiction to grant certiorari. The order of the the Supreme Judicial Court is temporary and preliminary. By its very terms, the order looks toward further action at a later date.

2. The order of the California State Bar Court has been reviewed by the California Supreme Court

and is -- at least prima facie -- valid. Whether entitled to full faith and credit or not, the order was procedurally fair and is entitled to comity. The Supreme Judicial Court of Massachusetts did not abuse its discretion by deciding that the findings of the State Bar Court of California provided a sufficient basis for action in Massachusetts.

3. The Supreme Judicial Court of Massachusetts did not violate any federally-protected right by refusing to rehear petitioner's constitutional challenge to the procedures of the California State Bar Court. Petitioner had a full opportunity to present her claims to the California Supreme Court and to this Court. Both Courts had denied relief. The Massachusetts Supreme Judicial Court was entitled, at least in preliminary proceedings, to rely on the decisions of the other courts.

ARGUMENT

I. THIS COURT HAS NO JURISDICTION TO GRANT CERTIORARI BECAUSE THERE HAS BEEN NO FINAL JUDGMENT.

It is an elementary principle that this Court has jurisdiction to review state court decisions only to the extent the decisions are "final judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257. The very terms of the decision presently in question demonstrates that it is not "final." Rather, Ms. Lebbos has been suspended from practice "pending final disposition" of the charges against her. Her suspension is terminable "upon application . . . at any time." S.J.C. Rule 4:01(12A). A temporary suspension entered to prevent "substantial harm to clients or prospective clients" is no more final than a temporary injunction entered to prevent irreparable harm.

II. THE MASSACHUSETTS COURT DID NOT VIOLATE ANY FEDERALLY-PROTECTED RIGHT BY ACCEPTING THE JUDGMENT OF THE CALIFORNIA COURTS.

The actions of the Massachusetts courts do not implicate any federal question. Essentially all of the petitioner's arguments address alleged inadequacies in California procedures. She seeks to bootstrap her difficulties with the California system into an attack on the actions of the Massachusetts courts. What the Massachusetts Supreme Judicial Court did was fully protective of the petitioner's right to due process of law.

A. The Attack on the California System--The petitioner presents a wide array of attacks on the California bar discipline system. All of her arguments have, however, already been fully considered in settings much more conducive to effective review than the setting of the present case. To begin with, all of the arguments which the petition is now making have already been made to this Court on direct review. The same considerations that impelled this Court to deny

certiorari in Lebbos v. State Bar, 110 S.Ct. 335 (1989), are applicable here. If certiorari was denied on direct review, it should certainly be denied on this collateral attack. Massachusetts Bar Counsel is neither equipped nor motivated to provide an adequate advocate for the California system. Granting review in this case would not result in a fair or effective consideration of the charges made by the petitioner.

In addition, the question of the constitutionality of the California State Bar Court was extensively reviewed in Conway v. State Bar, 47 Cal.3d 1107, 767 P.2d 657, 255 Cal. Rptr. 390 (1989). After careful consideration of arguments charging violation of both the state and federal constitutions, the California Supreme Court determined that the procedures for involuntary inactive status passed muster. It would not be appropriate for this Court to review the California

Supreme Court's decision in the setting of the present case.[1]

B. The Actions of the Massachusetts Court--The Supreme Judicial Court was fully protective of the procedural rights guaranteed to Ms. Lebbos. S.J.C. Rule 4:01(16) places significant limitations on the Court's power to act. The Court

> "may enter such order as the facts brought to its attention may justify and, in any event, may impose the identical discipline unless . . . the Court concludes, that
>
> (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
>
> (b) There was significant infirmity of proof establishing the misconduct;
>
> (c) imposition of the same discipline would result in grave injustice; or

---

[1]The petitioner argues that the validity of Conway and, indeed, the validity of the decision now at bar, is somehow implicated by this Court's decision in Keller v. State Bar, 495 U.S. --, 110 S.Ct. 2226, 110 L.Ed. 1 (1990). This argument borders on frivolity. The Court's resolution of the free-speech problems involved in an integrated state bar have little or no impact on the constitutionality of the State Bar Court system. Clearly, attorneys may be taxed to maintain a bar discipline system, and there is no suggestion in Keller to the contrary.

(d) the misconduct established does not justify the same discipline in this Commonwealth.

These restrictions were fully honored by the Supreme Judicial Court. The Court did not act until it had determined that Ms. Lebbos had received notice of the intentions of the State Bar Court, had been given an opportunity to defend, and had in fact brought her complaints to the attention of the California courts. There was no infirmity of proof. Twenty-five volumes of testimony and 110 exhibits were before the referee; in addition, the referee considered the decision of the State Bar Hearing Panel which concluded that Ms. Lebbos was culpable of nine counts of professional misconduct involving approximately forty separate acts. These acts included the altering of court papers and filing of false documents; giving false testimony; wilfully and deceitfully concealing assets in court proceedings; making false statements with the intent to mislead the courts; continual filing of frivolous motions to disqualify all judges of the Santa Clara

County Superior Court from hearing any case in which she appears as attorney; making of repeated offensive, disparaging, scurrilous and false statements atginst judges and opposing counsel; commingling of a client's trust funds in her own personal account; and filing a complaint that named as a plaintiff a former client without the former client's knowledge or consent. Such offenses fully support a temporary suspension in Massachusetts.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted,

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The history of the statute also does not support the plaintiff's position. Section 36A was enacted based on a bill filed with the House of Representatives in 1972 by Franklin N. Flaschner, the then Chief Justice of the District Courts. See St. 1972, c. 398. See also St. 1986, c. 599, § 38 (chapter rewritten without change to § 36A). Chief Justice Flaschner wrote to the Governor's legislative secretary that the bill was filed to fill "a gap in the new Mental Health Code." Chief Justice Flaschner wrote that, "[u]nder [prior c.] 123, there was a provision for the [maintenance] of private dockets and records concerning mental commitment cases. No comparable provision was encoded in the revision of Chapter 123. This bill takes care of that situation in a fair and comprehensive manner." Letter to Edward S. Morrow, the Governor's legislative secretary, from Franklin N. Flaschner dated April 28, 1972. The history of the legislation indicates a legislative intent to protect the privacy of persons subjected to mental examinations by courts, but the history does not indicate an intent to create a cause of action for violation of the statute.

Thus, neither the words of the statute nor the history of the legislation supports the plaintiff's position. The ruling on the defendant's motion to dismiss is reversed. The case is remanded to the Superior Court for entry of an order allowing the defendant's motion to dismiss because the complaint fails to state a claim on which relief can be granted.[1]

So ordered.

Roberta T. Brown, Special Assistant Attorney General, for the defendant.

IN THE MATTER OF BETSEY WARREN LEBBOS. June 13, 1990. *Attorney at Law*, Reciprocal discipline.

On December 13, 1989, on petition of bar counsel, a single justice of this court entered a judgment suspending the attorney from the practice of law in the Commonwealth pending final disposition of disbarment proceedings against her in California. The judge entered the order under S.J.C. Rule 4:01, § 16 (3), 365 Mass. 709 (1974), concerning reciprocal discipline.

Section 16 provides that, after notice and hearing, and following receipt of a certified copy of an order suspending a Massachusetts attorney from practice in another jurisdiction, the judge "may enter such order as the facts brought to [the judge's] attention may justify and, in any event, may impose the identical discipline unless . . . (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; (b) there was significant infirmity of proof establishing the misconduct; (c) imposition of the same discipline would result in grave injustice; or (d) the misconduct established does not justify the same discipline in this Com-

[1]The complaint makes no claim pursuant to G. L. c. 214, § 1B.

monwealth." *Id.* See S.J.C. Rule 4:01, § 16 (1), as appearing in 402 Mass. 1302 (1988). An order had been entered in California involuntarily transferring the attorney to "an inactive status" on the basis of a finding that her conduct "poses a substantial threat of harm to the public or to [her] clients." The involuntary transfer of the attorney to inactive status is equivalent to what we call a temporary suspension. See *Conway* v. *State Bar of Cal.*, 47 Cal 3d 1107, 1111 (1989) ("involuntary enrollment of an attorney on inactive status . . . operates as a temporary suspension from the practice of law"). The attorney had voluntarily been on inactive status in Massachusetts and sought active status here only after her problems in California arose.

Although the record before us is sparse, we are able to conclude that, according to California practice, a hearing in which the attorney participated was held on charges of disciplinary violations against her. That hearing resulted in a finding of numerous violations of the California State Bar Rules of Professional Conduct, and a recommendation of disbarment. A record of the proceeding and a copy of the decision were filed with the Supreme Court of Califronia. See Cal. Bus. & Prof. Code § 6081 (West 1974). The matter of disbarment is pending on appeal in California. See *id.* at § 6082 (West 1974 & Supp. 1990).

Pending review of the recommendations of disbarment, the California State bar sought the attorney's involuntary inactive enrollment. Although notice of a hearing was sent to the attorney, she did not appear. The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status. The attorney then sought relief from that order. The Supreme Court of California denied relief, and the Supreme Court of the United States denied her petition for a writ of certiorari. *Lebbos* v. *State Bar of Cal.*, 110 S. Ct. 335 (1989).

We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings. The single justice was entitled in his discretion, as we are in our discretion, to conclude that, because the Supreme Court of California rejected the attorney's challenge to her temporary suspension pending a final appellate decision on her disbarment, parallel temporary sjuspension in Massachusetts is warranted. The attorney's various challenges to the constitutionality of the procedures in California need not be reassessed and decided here. Section 16 permits a final adjudication of misconduct, made in another jurisdiction, to be treated as establishing that misconduct for our purposes. See S.J.C. Rule 4:01, § 16 (5), as appearing in 402 Mass. 1302 (1988). A final adjudication made elsewhere that circumstances warrant a temporary suspension may properly be the basis for a reciprocal order of temporary suspension here, particularly when the Supreme Court of that jurisdiction has upheld that order.

Judgment affirmed.